

### § 90.3

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coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted.

*Valid respirable dust sample* means a respirable dust sample collected and submitted as required by this part, and not voided by MSHA.

#### § 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at an underground coal mine or at a surface work area of an underground coal mine who, in the judgment of the Secretary of Health and Human Services, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of Health and Human Services, or based on other medical examinations shall be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air. Each of these miners shall be notified in writing of eligibility to exercise the option.

(b) Any miner who is a section 203(b) miner on January 31, 1981, shall be a Part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment, shift and respirable dust protection.

(c) Any Part 90 miner who is transferred to a position at the same or another coal mine shall remain a Part 90 miner entitled to full rights under this part at the new work assignment.

(d) The option to work in a low dust area of the mine may be exercised for the first time by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who was eligible for the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Blvd., Room 2416, Arlington, Virginia 22209–3939.

(e) The option to work in a low dust area of the mine may be re-exercised by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or exercised the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Blvd., Room 2416, Arlington, Virginia 22209–3939. The request should include the name and address of the mine and operator where the miner is employed.

(f) No operator shall require from a miner a copy of the medical information received from the Secretary or Secretary of Health and Human Services.

[45 FR 80769, Dec. 5, 1980; 46 FR 5885, Jan. 21, 1981, as amended at 67 FR 38386, June 4, 2002]

EFFECTIVE DATE NOTE: At 79 FR 24988, May 1, 2014, Subpart A to part 90 was revised, effective Aug. 1, 2014. For the convenience of the user, the revised text is set forth as follows:

#### Subpart A—General

##### § 90.1 Scope.

This part 90 establishes the option of miners who are employed at coal mines and who have evidence of the development of pneumoconiosis to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below the applicable standard as specified in § 90.100. The rule sets forth procedures for miners to exercise this option, and establishes the right of miners to retain their regular rate of pay and receive wage increases. The rule also sets forth the operator's obligations, including respirable dust sampling for part 90 miners. This part 90 is promulgated pursuant to section 101 of the Act and supersedes section 203(b) of the Federal Mine Safety and Health Act of 1977, as amended.

##### § 90.2 Definitions.

The following definitions apply in this part:

*Act.* The Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164 and Public Law 109–236.

*Active workings.* Any place in a coal mine where miners are normally required to work or travel.

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*Approved sampling device.* A sampling device approved by the Secretary and Secretary for Health and Human Services (HHS) under part 74 of this title.

*Certified person.* An individual certified by the Secretary in accordance with §90.202 to take respirable dust samples required by this part or certified in accordance with §90.203 to perform the maintenance and calibration of respirable dust sampling equipment as required by this part.

*Coal mine dust personal sampler unit (CMDPSU).* A personal sampling device approved under part 74, subpart B, of this title.

*Concentration.* A measure of the amount of a substance contained per unit volume of air.

*Continuous personal dust monitor (CPDM).* A personal sampling device approved under part 74, subpart C, of this title.

*District Manager.* The manager of the Coal Mine Safety and Health District in which the mine is located.

*Equivalent concentration.* The concentration of respirable coal mine dust, including quartz, expressed in milligrams per cubic meter of air (mg/m<sup>3</sup>) as measured with an approved sampling device, determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the filter (sampling time in minutes (t) times the sampling airflow rate in cubic meters per minute), and then converting that concentration to an equivalent concentration as measured by the Mining Research Establishment (MRE) instrument. When the approved sampling device is:

(1) The CMDPSU, the equivalent concentration is determined by multiplying the concentration of respirable coal mine dust by the constant factor prescribed by the Secretary.

(2) The CPDM, the device shall be programmed to automatically report end-of-shift concentration measurements as equivalent concentrations.

*Mechanized mining unit (MMU).* A unit of mining equipment including hand loading equipment used for the production of material; or a specialized unit which uses mining equipment other than specified in §70.206(b) or in §70.208(b) of this chapter. Each MMU will be assigned a four-digit identification number by MSHA, which is retained by the MMU regardless of where the unit relocates within the mine. However, when:

(1) Two sets of mining equipment are used in a series of working places within the same working section and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment shall be identified as a single MMU.

(2) Two or more sets of mining equipment are simultaneously engaged in cutting, mining, or loading coal or rock from working places within the same working section, each

set of mining equipment shall be identified as a separate MMU.

*MRE instrument.* The gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

*MSHA.* The Mine Safety and Health Administration of the U.S. Department of Labor.

*Normal work duties.* Duties which the part 90 miner performs on a routine day-to-day basis in his or her job classification at a mine.

*Part 90 miner.* A miner employed at a coal mine who has exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or under §90.3 of this part to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the applicable standard, and who has not waived these rights.

*Quartz.* Crystalline silicon dioxide (SiO<sub>2</sub>) not chemically combined with other substances and having a distinctive physical structure.

*Representative sample.* A respirable dust sample, expressed as an equivalent concentration, that reflects typical dust concentration levels in the working environment of the part 90 miner when performing normal work duties.

*Respirable dust.* Dust collected with a sampling device approved by the Secretary and the Secretary of HHS in accordance with part 74 (Coal Mine Dust Sampling Devices) of this title.

*Secretary.* The Secretary of Labor or a delegate.

*Secretary of Health and Human Services.* The Secretary of Health and Human Services (HHS) or the Secretary of Health, Education, and Welfare.

*Transfer.* Any change in the work assignment of a part 90 miner by the operator and includes: (1) Any change in occupation code of a part 90 miner; (2) any movement of a part 90 miner to or from an MMU; or (3) any assignment of a part 90 miner to the same occupation in a different location at a mine.

*Valid respirable dust sample.* A respirable dust sample collected and submitted as required by this part, including any sample for which the data were electronically transmitted to MSHA, and not voided by MSHA.

### § 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at a coal mine who, in the judgment of the Secretary of HHS, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of HHS, or based on other medical examinations shall be afforded the

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option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the applicable standard. Each of these miners shall be notified in writing of eligibility to exercise the option.

(b) Any miner who is a section 203(b) miner on January 31, 1981, shall be a part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment, shift and respirable dust protection.

(c) Any part 90 miner who is transferred to a position at the same or another coal mine shall remain a part 90 miner entitled to full rights under this part at the new work assignment.

(d) The option to work in a low dust area of the mine may be exercised for the first time by any miner employed at a coal mine who was eligible for the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209.

(e) The option to work in a low dust area of the mine may be re-exercised by any miner employed at a coal mine who exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or exercised the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209. The request should include the name and address of the mine and operator where the miner is employed.

(f) No operator shall require from a miner a copy of the medical information received from the Secretary or Secretary of HHS.

## Subpart B—Dust Standards, Rights of Part 90 Miners

### § 90.100 Respirable dust standard.

After the twentieth calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the Part 90 miner in the active workings of the mine is exposed at or below 1.0 milligrams per cubic meter of air. Concentrations shall be measured with an approved sampling device and expressed in terms of an equivalent concentration determined in accord-

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ance with § 90.206 (Approved sampling devices; equivalent concentrations).

### § 90.101 Respirable dust standard when quartz is present.

When the respirable dust in the mine atmosphere of the active workings to which a Part 90 miner is exposed contains more than 5 percent quartz, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which a Part 90 miner is exposed at or below a concentration of respirable dust computed by dividing the percent of quartz into the number 10. The application of the formula shall not result in a respirable dust standard in excess of 1.0 milligrams per cubic meter of air. Concentrations shall be expressed in milligrams per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 90.206 (Approved sampling devices; equivalent concentrations).

*Example:* The respirable dust associated with a Part 90 miner contains quartz in the amount of 20%. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that Part 90 miner shall be continuously maintained at or below 0.5 milligrams of respirable dust per cubic meter of air ( $10/20=0.5$  mg/m<sup>3</sup>).

### § 90.102 Transfer; notice.

(a) Whenever a Part 90 miner is transferred in order to meet the respirable dust standard in § 90.100 (Respirable dust standard) or § 90.101 (Respirable dust standard when quartz is present), the operator shall transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. The operator may transfer a Part 90 miner to a different coal mine, a newly-created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer.

(b) On or before the twentieth calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator shall give the District Manager written